

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anna Steel	Team: Team # 8	CCRB Case #: 201005690	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 03/04/2010 4:45 PM	Location of Incident: 130 Suffolk Street	Precinct: 07	18 Mo. SOL 9/4/2011	EO SOL 9/4/2011	
Date/Time CV Reported Thu, 04/29/2010 1:02 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Thu, 04/29/2010 1:02 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Anthony Demonte	00915	925184	NARCBMS
2. DT3 Christophe Bender	01205	932318	NARCBMS
3. DT3 Stephan Munafo	04422	934012	NARCBMS
4. An officer			NARCBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Tarah Barrett	02277	926547	NARCBMS
2. DT3 Robert Lotufo	04648	916078	NARCBMS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Anthony Demonte	Abuse: Sgt. Anthony Demonte stopped § 87(2)(b)	
B.SGT Anthony Demonte	Force: Det. Anthony Demonte used physical force against § 87(2)(b)	
C.DT3 Christophe Bender	Force: Det. Christopher Bender used physical force against § 87(2)(b)	
D.DT3 Stephan Munafo	Force: Det. Stephan Munafo used physical force against § 87(2)(b)	
E. An officer	Force: An officer used a chokehold against § 87(2)(b)	

Case Summary

§ 87(2)(b) filed a complaint with the CCRB on April 29, 2010 (encl. 4a – 4b).

On March 4, 2010, at about 4:30 PM, § 87(2)(b) was approached by Sgt. Anthony Demonte, Det. Christopher Bender, and Det. Stephan Munafo from Narcotics Borough Manhattan South, resulting in the following allegations:

- **Allegation A – Abuse of Authority: Sgt. Anthony Demonte stopped § 87(2)(b)** As Sgt. Demonte had reasonable suspicion to stop § 87(2)(b) it is recommended that Allegation A be closed, **Exonerated**.
- **Allegation B – Force: Sgt. Anthony Demonte used physical force against § 87(2)(b)**
- **Allegation C – Force: Det. Christopher Bender used physical force against § 87(2)(b)**
- **Allegation D – Force: Det. Stephen Munafo used physical force against § 87(2)(b)** As § 87(2)(g)
- **Allegation E – Force: An officer used a chokehold against § 87(2)(b)** As the § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant/victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male who is 6'2" tall, weighs 180, and has black hair.

§ 87(2)(b) interviewed at the CCRB on May 12, 2010 (encl. 5a – 5g). On March 4, 2010, at about 4:30 PM, § 87(2)(b) went to a bodega located near Essex Street and Suffolk Street in Manhattan. He played the numbers and left. He did not see anyone he knew, did not speak with anyone, and did not exchange anything with anyone at any point on the day of the incident. § 87(2)(b) began walking south on Suffolk Street. He initially felt as though someone was following him, though he was not sure. A van pulled in front of him and two officers, identified through the investigation as Det. Christopher Bender and Det. Stephan Munafo from Narcotics Borough Manhattan South, exited and began walking towards him. An officer, identified through investigation as Sgt. Anthony Demonte of the same command, suddenly wrapped his arms around § 87(2)(b)'s midsection from behind and pushed forward such that § 87(2)(b) fell onto the ground on his stomach. § 87(2)(b) curled into the fetal position and covered his face with his arms. He felt the officers punching and kicking him all over his body more times than he could estimate. § 87(2)(b) did not resist. During the struggle, someone standing over him wrapped both hands around his neck and squeezed until § 87(2)(b) almost passed out from lack of oxygen. He did not who choked him, and could not estimate for how long he was choked. § 87(2)(b) was eventually handcuffed and walked towards an ambulance. Det. Bender and Det. Munafo accompanied him to the hospital. According to his medical records (encl. 15a – 15i), a three-centimeter laceration on the top of his head was closed with three staples and he was treated for abrasions and swelling on his face, hands and wrists. Pursuant to his arrest, § 87(2)(b) was charged with tampering with physical evidence, criminal possession of a controlled substance in the seventh degree, and resisting arrest. § 87(2)(b) denied being in possession of any narcotics and denied trying to put anything in his mouth prior to the approach of the officers.

NYPD Statement(s):

Subject Officer: DET. CHRISTOPHER BENDER

- *Det. Bender is a § 87(2)(b).*
- *On the day of the incident, Det. Bender was assigned to a narcotics field team and worked from 12:27 PM to 9:00 PM with Det. Stephan Munafo in plainclothes and in an unmarked van.*

CCRB Testimony

Det. Bender was interviewed at the CCRB on June 24, 2010 (encl. 8a – 8b). On March 4, 2010, at about 4:30 PM, Det. Bender and his partner, Det. Stephan Munafo, received a radio transmission from a member of their team describing a hand to hand transaction. The transaction took place inside of a bodega on Suffolk Street near either Stanton Street or Rivington Street. The buyer, later determined to be § 87(2)(b) was described as a black male walking southbound on Suffolk Street. Sgt. Demonte said he was following § 87(2)(b). Det. Bender responded to the scene as Sgt. Demonte approached § 87(2)(b) from behind. Sgt. Demonte grabbed § 87(2)(b)'s arms and shouted, "Police!" § 87(2)(b) shoved several glassines, containing a substance that Det. Bender suspected was heroine, into his mouth and appeared to swallow. Det. Bender and Det. Munafo went to assist Sgt. Demonte. They grabbed § 87(2)(b)'s arms. § 87(2)(b) resisted by flailing his arms and legs. During the struggle, the officers and § 87(2)(b) were thrown off balance. They fell against a chain link fence and then onto the ground. § 87(2)(b) lay on his stomach and held his hands clenched underneath his chest.

They were eventually able to pull § 87(2)(b)'s arms behind his back and handcuff him as the remaining members of their team, Det. Tarah Barret and Det. Robert Lotufo, responded to the scene. None of the officers took any action to remove the glassines of heroine from § 87(2)(b)'s mouth. They never gripped his jaw or mouth, never squeezed his neck, and never choked him. Det. Bender saw § 87(2)(b) had a small laceration on the top of his head, which Det. Bender suspected he had sustained when falling to the ground. An ambulance responded to the scene and § 87(2)(b) was taken to § 87(2)(b) Hospital. When examined by medical personnel, § 87(2)(b) was found to have several glassines of heroine between his buttocks. The narcotics were removed by a doctor.

Witness Officer: DET. ROBERT LOTUFO

- *Det. Lotufo is a § 87(2)(b).*
- *On the day of the incident, Det. Lotufo held the same assignment as Det. Bender.*

CCRB Testimony

Det. Lotufo was interviewed at the CCRB on June 24, 2010 (encl. 10a – 10b), at which time he gave a statement to the CCRB that was consistent with Det. Bender's testimony with the following variations: Det. Lotufo stated that it was Sgt. Demonte who observed § 87(2)(b) engage in the hand to hand transaction. He put over the description and direction of flight over the radio and followed him down Suffolk Street. Det. Lotufo did not respond to the scene until he received word that they had effected the arrest. When he arrived, Sgt. Demonte, Det. Bender, and Det. Munafo were struggling to handcuff § 87(2)(b). Det. Lotufo did not assist them. Det. Lotufo was later informed that § 87(2)(b) had swallowed a few glassines of heroine. Det. Lotufo never saw any officers try to remove anything from § 87(2)(b)'s mouth. The officers never gripped his jaw or mouth, never squeezed his neck, and never choked him. Following the incident, Sgt. Demonte learned he had contracted Hepatitis C as a result of his struggle with § 87(2)(b) who is also HIV positive.

Officers Not Interviewed by the Investigation

While Det. Barrett, Det. Munafo, and Sgt. Demonte were present at the scene, the investigation did not need to interview them to reach a determination regarding the allegations in this case.

Medical Records

According to an ambulance call report (encl. 14a – 14d), EMS responded to Rivington Street and Suffolk Street in regards to § 87(2)(b) who was found prone in handcuffs with dried blood on his face near a ½ inch laceration on the top of his head. EMS noted that § 87(2)(b) was uncooperative and, as per the officers, had struggled with them and swallowed a small amount of heroine. An examination of his head revealed no edema or ecchymosis.

According to § 87(2)(b) Hospital Center medical records (encl. 15a – 15i), § 87(2)(b) was seen by medical personnel on § 87(2)(b) for a laceration to his head and heroine ingestion. During a physical examination, several small packages of heroine fell out of his pants. Medical personnel noted that he had a psychiatric history and took medication. Medical personnel noted that § 87(2)(b) had a three centimeter laceration on the top of his head, which was cleaned and closed with staples, as well as abrasions and swelling on his face, hands and wrists. A CT scan showed no sign of abnormality.

NYPD Document(s)

Arrest Report

- According to § 87(2)(b)'s arrest report (encl. 12a – 12b), he was observed swelling a quantity of a controlled substance and resisted his arrest by kicking and refusing to be handcuffed.

Criminal Court Complaint

- According to the criminal court complaint (encl. 13a – 13b), Sgt. Demonte observed § 87(2)(b) swallow a white glassine of heroine when he stopped him. § 87(2)(b) then resisted his arrest by flailing and refusing to be handcuffed.

Tactical Plan

- According to a tactical plan (encl. 18), the area in which § 87(2)(b) was arrested was known for heroine, cocaine and marijuana activity.

Property Vouchers

- One white glassine of heroine, one purple glassine of heroine, and eight clear plastic bags of heroine were vouchered to § 87(2)(b) as arrest evidence.

Summons/Arrest for Incident and Disposition

- Case number § 87(2)(b) open. The next scheduled court date is § 87(2)(b), in criminal Court. (encl. 21a – 21b).

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of June 24, 2010, with regard to the incident (encl. 23).

§ 87(2)(b)

Subject Officer(s) CCRB History

- Sgt. Demonte has been a member of the service for ten years and there are three CCRB allegations substantiated against him: IN CCRB case 200207663, a force allegation and entry and search allegation were substantiated against him. Charges were recommended and dismissed at a departmental trial. In CCRB case 200304215, a force allegation was substantiated against him. Charges were recommended and he was found not guilty at a departmental trial (encl. 3a – 3b).
- Det. Bender and Det. Munafo have been members of the service for six years and there are no substantiated CCRB allegations against them (encl. 3c – 3d).

Conclusion

Identification of Subject Officer(s)

- It is undisputed that Sgt. Demonte stopped § 87(2)(b) and that Sgt. Demonte, Det. Bender, and Det. Munafo used physical force against § 87(2)(b).
- § 87(2)(b) did not know which officer choked him. This allegation has therefore been pleaded against ‘an officer’ from Narcotics Borough Manhattan South.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Sgt. Anthony Demonte stopped § 87(2)(b)

It is undisputed that Sgt. Demonte stopped § 87(2)(b). According to Det. Bender and Det. Lotufo, Sgt. Demonte saw § 87(2)(b) in a hand to hand transaction in a bodega located on Suffolk Street. Sgt. Demonte described § 87(2)(b) reported that he was walking south on Suffolk Street, and began following him on foot. While § 87(2)(b) denied exchanging anything with anyone or being in possession of any narcotics on the day of the incident, he confirmed that he briefly went to a bodega and then began walking south on Suffolk Street. The fact that he was in possession of narcotics was verified not only by the officers and his arrest paperwork (encl. 12a – 12b; encl. 13a – 13b), but also by medical personnel who found multiple glassines of heroine in his pants (encl. 15a – 15i). A total of ten bags of heroine were also vouchered to him as arrest evidence (encl. 20a – 20c). The investigation therefore credited the officers’ account and determined that Sgt. Demonte saw § 87(2)(b) engage in a hand to hand transaction. According to Kamins, New York Search & Seizure, p. 2-45 (2007 ed.), a police officer may forcibly stop an individual when he has reasonable suspicion that “the person is committing, has committed or is about to commit a crime” (encl. 1a --- 1b). Kamins, New York Search & Seizure notes that the burden of meeting reasonable suspicion will be met when an officer ‘observes an exchange of currency for an unidentified object’ in a drug prone area. A tactical plan confirmed that the area in which § 87(2)(b) was arrested was known for heroine sales, among other narcotics (encl. 1a – 1b). It is

§ 87(2)(b), § 87(2)(g)

Allegation B – Force: Sgt. Anthony Demonte used physical force against § 87(2)(b)

Allegation C – Force: Det. Christopher Bender used physical force against § 87(2)(b)

Allegation D – Force: Det. Stephen Munafo used physical force against § 87(2)(b)

It is undisputed that Sgt. Demonte, Det. Bender and Det. Munafo used physical force against § 87(2)(b). According to § 87(2)(b), Sgt. Demonte tackled him to the ground, where he lied in the fetal position, and he was then punched and kicked all over his body more times than he could estimate. According to Det. Bender, the officers only grabbed his arms and, when caught off-balance, fell to the ground with him before they were able to pull his arms behind his back. § 87(2)(g). First, § 87(2)(b)'s medical records show that his only injuries were abrasions on his face, hands and wrists, and a three-centimeter laceration on the top of his head (encl. 15a – 15i). § 87(2)(b), § 87(2)(g)

Finally, § 87(2)(b)'s central assertion was that he was not in possession of narcotics on the day of the incident, the primary charge filed against him pursuant to his arrest. § 87(2)(b), § 87(2)(g)

According to Patrol Guide Section 203-11, an officer may use that amount of force necessary to overcome resistance and effect an arrest (encl. 2). In this case, the officers brought § 87(2)(b) to the ground and restrained him by pulling his arms behind his back and handcuffing him. Det. Bender stated that § 87(2)(b) resisted by flailing his arms and legs, and clenching his arms under his chest once on the ground. Det. Bender's testimony was corroborated by § 87(2)(b)'s arrest report (encl. 12a – 12b) and criminal court complaint (encl. 13a – 13b). § 87(2)(g)

Allegation E – Force: An officer used a chokehold against § 87(2)(b)

§ 87(2)(b) alleged that, during the officers' struggle to handcuff him, an officer standing above him wrapped both hands around his neck and squeezed until § 87(2)(b) almost passed out from lack of oxygen. § 87(2)(b), § 87(2)(g)

§ 87(2)(b). According to his medical records (encl. 15a – 15i), medical personnel noted that his neck showed no sign of injury or redness. Had an § 87(2)(b), § 87(2)(g)

Team: _____

Investigator: _____ : _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date